

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 472 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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KENNY BRUNO

Versus

CHEMIE ORGANICS

Appearance:

1. Civil Revision Application No. 472 of 2001
MR BHUSHAN B OZA for Petitioner No. 1
SINGHI & CO for Respondent No. 1-3
..... for Respondent No. 4-7
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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/02/2002

C.A.V. JUDGEMENT

DATE OF PRONOUNCEMENT : 28/03/2002

1. The defendant no. 5 of the Civil Suit no. 195/97 filed before the Civil Judge (S.D.), Valsad has

filed this Civil Revision Application under Sec. 115 of the Civil Procedure Code against the order dated 31.7.00, whereby his application to strike out his name from the array of defendants given under Order 1 Rule 10(2) of Civil Procedure Code came to be rejected.

2. According to Mr.Raj Panjwani L.A. for Mr.Bushan Oza L.A. for the petitioner, the Special Civil Suit No. 195/97 was filed by M/s Chemie Organics and others in the court of Civil Judge (S.D.), Valsad to recover the damages on account of publication of certain observations made in the report by name "Stranger" by Green Peace International & Others, New Delhi. The defendant no. 5/present petitioner has been joined as a party-defendant on the averment made in the plaint that "the defendant no. 5 has played active role in circulation of the stranger which includes defamatory article" as stated in para 2 of the plaint.

3. According to the learned counsel for the petitioner/defendant no. 5, he is neither author or publisher or printer of the book but his name has been shown as one of the contributors. According to the learned counsel for the petitioners, the concerned paras for which the present petitioner has been sued is reproduced below and appears on page 61 of the book which reads as under :

" Vapi is home to Chemie-Organics; described by Greenpeace scientist, Dr. David Santillo, as, possibly the worst piece of chemical plant I have ever, and will ever, set eyes on." He was unable to sample what appeared to be the main effluent channel because there were too many workers queuing to wash themselves and their tools in it! However, a sample of sludge from an open ditch on-site revealed a host of highly toxic, persistent organochlorines: apart from the ubiquitous chlorobenzenes, the sludge also contained high levels of mono-, di- and trichlorobiphenyls (i.e. PCBs), chlorinated terphenyls and hexachlorocyclohexane. The full list reads like a guide to the most dangerous organochlorines. Any responsible regulatory authority would shut down this plant immediately."

If we peruse the said para, it refers to the scientist Dr. David Santillo who is the defendant no. 3 in the suit and in no way the present petitioner is concerned. If at all any cause arises for the suit, it

is against Dr.David Santillo and not against the petitioner. Under the circumstances, the present C.R.A. be allowed by setting aside the order of the trial court.

4. In support of his submissions, the learned counsel relied on the following authorities :

1. Marriot V/s Chamberlain reported in (1886) XVII Q.B.D. 154
2. Humphries V/s Taylor reported in (1888) XXXIX Ch-Div.693
3. Zierenberg V/s Labouchere reported in (1893) 2 Q.B.D.183
4. Wootton V/s Siever reported in (1913) 3 K.B.D.
5. Nannu Mal V/s Prasad reported in AIR 1926 All. 672
6. Brijlal Prasad V/s Mahant reported in A.I.R. 1940 Nag. 125
7. Nedungadi Bank V/s Official Assignee reported in A.I.R. 1930 Mad. 473
8. A.P.Wakf Board V/s Alapati reported in A.I.R. 1975 A.P. 8

Learned Counsel has also produced on record copy of report of "Stranger", plaint, reply to application filed under Order 1 Rule 10 (2) of Civil Procedure Code etc. In the said reply of the respondents herein it is mentioned in para 2 that "in fact the defendant no. 5 co-authored the report published by the defendant no. 1 in March 1995 and which is a prelude and fore runner to the publication". I have also perused the article "Norway to India" - a case study of hazardous technology transfer published by Greenpeace Intrernational, March 1995 and written by Kenny Bruno, Greenpeace International specialist on Technology Transfer, Greenpeace, US New York. The respondents grievance is regarding the article appeared on page 61 of "the Stranger" and not in "Norway to India" as published earlier. If we peruse the plaint produced on record, there is no reference of article published in "Norway to India". Therefore, also there is no reason in not allowing this C.R.A. filed by the original defendant no. 5.

5. Against the aforesaid submissions, M/s Singhi & Co. L.A. for the respondent submitted that the matter requires trial and therefore this court should not interfere in the order passed by the learned trial court judge at this stage as the power under Sec. 115 of the Civil Procedure is very limited and the Apex Court has cautioned the High Courts to enter in such orders which requires trial. In furtherance of the submissions,

learned counsel for the respondent relied on the authorities in case of :

1. Kedar Lal Seal and another V/s Hari Lal Seal reported in A.I.R. (39) 1952 S.C. 47.
2. Ahsanali Nazarali V/s Kazi Syed Hifazatali and others reported in AIR 1956 Nagpur 146

and submitted that the court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side; however, clumsily or inartistically the plaint may be worded. It is further submitted that if there is a conspiracy, it is not bad for misjoinder of causes of action. The suit cannot also be said to have been bad for misjoinder of parties even if everyone of the defendants alleged to have been in the conspiracy is not proved to be a conspirator. The court has to go by the case alleged in the plaint and sought to be established by the plaintiff and not by the result of the suit.

6. Learned counsel also relied on the case of R.M.Seshadri V/s G.Vasantha Pai and others reported in AIR 1969 S.C. 692. It was a case of election under the Representation of People Act 1951. The plea of corrupt practice of hiring or procuring motor cars to carry voters, particulars of cars and voters given and connection of candidate with use of cars was sufficiently pleaded. Under the circumstances, the court held that it was a matter of evidence.

7. Lastly, the learned counsel for the respondent relied on the case of Madanlal V/s Shyamlal reported in AIR 2002 S.C. 100 and submitted that the documents which are required to be produced in the suit for specific performance of agreement to sell were not produced at the relevant time before the settlement of the issues on account of loss the documents by a trusted person cannot be termed as a good cause under Order 13 Rule 2 of the Civil Procedure Code. The Apex Court came to the conclusion that rejection of defendant's application for producing documents before his evidence is recorded does not amount to material irregularity and thereupon dismissed the appeal under Sec. 115 of the Civil Procedure Code.

8. In my view, the aforesaid authorities are based on the facts of each case. In the facts before me, there is no explanation regarding what role the appellant/defendant no. 5 has played and mere

allegations regarding the role played by the appellant cannot be accepted. It is pertinent to note that the appellant-defendant no. 5 is residing in U.S.A. and not in India and therefore the circulation of the book "Stranger" by this person cannot be believed much more when the article alleged to have been not written by this appellant. Therefore, the authorities cited by the learned counsel for the respondent does not apply to the present case.

9. I have gone through the authorities, the papers, the report of "Stranger" and I am of the opinion that the learned trial Judge has erred in not exercising the jurisdiction vested in him by not allowing the application under Order 1 Rule 10(2) of the Civil Procedure Code, thereby violated the principles of natural justice. I am fully aware that in the plaint, substance is required to be mentioned and not the evidence. If we peruse the sentence for which he has been made party in the civil suit, it is not sufficient to continue him as party-defendant in the suit. Along with the name of Mr. Bruno, the present appellant-defendant no. 5, there are 12 other names mentioned against the words "contributors." Now, the other 12 persons are not joined as defendants and therefore it is difficult to come to the conclusion whether the present appellant is the author of the article in question for which the dispute is raised. The article in question refers to the name of David Santillo who is the party-defendant no. 3 in the suit and does not refer the name of the present defendant no. 5. In any case, I am of the opinion that the para in question is not contributed by the present appellant-defendant no. 5 in the book by name "Stranger". I have perused the authorities cited by the appellant herein and I am of the opinion that more or less they are applicable to the facts and circumstances of this case. In the above circumstances, this Civil Revision Application deserves to be allowed.

10. Therefore, this Civil Revision Application is allowed and the present appellant/original defendant no. 5 is hereby dropped from the array of the defendants in the Civil Suit no. 195/97 pending before the Civil Judge (S.D.) Valsad. Rule is made absolute with no orders as to cost.

(SHARAD D DAVE, J)

srilatha

After this judgment was pronounced, L.A. for the respondent prayed for stay of this judgment to approach the higher forum. Therefore, this order is stayed till 26.4.02.

28/03/2002 (SHARAD D DAVE, J)